
1997 Wis Eth Bd 3
MEALS, LODGING, TRAVEL AND ENTERTAINMENT

Agency officials may participate in a trip to a foreign country if the trip is authorized by the agency as an undertaking on behalf of the state and primarily for the state's benefit and the agency officials travel as the state's representatives. (June 27, 1997)

Facts

¶ 1. This opinion is based upon these understandings:

- a. You write on behalf of a state agency, of which you are chief legal counsel.
- b. An association has invited a member of the agency's governing board, a division administrator, and a classified employee of the agency to travel to a foreign country to advise officials of the country on setting up a similar agency.
- c. The association proposes to pay the associated travel expenses.
- d. The association is a nonprofit organization involved in issues affecting an industry that your agency regulates and is composed of trade groups, manufacturers, and others.
- e. An agency of the United States government provides most of the association's money.
- f. The trip would be a follow-up visit to a visit by officials from the foreign country to your agency in 1996.

Questions

¶ 2. The Ethics Board understands your question to be:

What restrictions, if any, do laws administered by the Ethics Board impose on the state officials' and employees' participating in the proposed trip?

Discussion

¶ 3. The Code of Ethics for Public Officials and Employees, administered by the Ethics Board, applies only to state public officials; that is, to the members of the agency's governing board and the division administrator on whose behalf you have written.¹ The classified employee on whose behalf you also write is subject to the Department of Employment Relations' rules, Wis. Admin. Code Chapter ER-MRS 24. Therefore, we answer your question as it pertains to the member of the agency's governing board and administrator.

¶ 4. Section 19.45(3m), *Wisconsin Statutes*, provides:

19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

The exception most pertinent to the situation about which you have asked is §19.56(3)(c), *Wisconsin Statutes*. That section provides:

19.56(3)(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual or reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

¶ 5. The question, then, is whether the officials can meet their burden of demonstrating that the trip is primarily for the benefit of the state. The Ethics Board has consistently said that if an official consults with the official's agency and the agency approves the travel and participation as an official undertaking of the State of Wisconsin and designates the individual to be the state's representative, the Ethics Board will be reluctant to second-guess that determination. 1992 Wis Eth Bd 07 ¶4; 1992 Wis Eth Bd 04 ¶4; 1991 Wis Eth Bd 10 ¶6.

¶ 6. In this case, other facts you have presented bolster the apparent reasonableness of the agency's determination that the proposed travel would

¹ The Ethics Code applies to state public officials. The member of the agency's governing board is a state public official by virtue of holding a position "to which individuals are regularly appointed by the governor" and a position identified in §20.923, *Wisconsin Statutes*. §19.42(13)(a) and (c), *Wisconsin Statutes*. The division administrator is a state public official by virtue of being a "division administrator of [an] independent agency." §19.42(13)(j), *Wisconsin Statutes*.

benefit the state: (1) the agency has, in the past, taken the position that advising other agencies is one of its official functions; and (2) the agency has expended staff time and resources both in hosting visitors from other agencies and in sending individuals to advise other agencies.

Advice

¶ 7. The agency on whose behalf you have written has made a prima facie case that the trip to a foreign country is on behalf of the State of Wisconsin and primarily for the state's benefit. The Ethics Board is unaware of any countervailing considerations. Hence, unless the letter seeking advice omitted a substantial, material ingredient, we advise that agency officials may participate in the trip to the foreign country if the trip is authorized by the agency as an undertaking of the state and they travel as the state's representatives.

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